



January 16, 2008

SENATE BILL No. 178

DIGEST OF SB 178 (Updated January 14, 2008 12:28 pm - DI 52)

Citations Affected: IC 13-23.

Synopsis: Underground storage tank corrective actions. Provides that a person who undertakes certain corrective action in response to a release from an underground storage tank (UST) is entitled to: (1) recover corrective action costs; or (2) receive contribution from a person who owned or operated the UST at the time the release occurred. Limits the entitlement of a person who brings a successful cost recovery or contribution action by allowing a court to use legal and equitable factors that the court determines are appropriate to award and allocate costs and attorney's fees.

Effective: Upon passage.

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January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.

January 15, 2008, reported favorably — Do Pass.

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January 16, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 178

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-23-13-5.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a)
3 Notwithstanding any other provision of this chapter, a person who is
4 not an owner or operator of an underground storage tank is liable to the
5 state only for corrective action to address a surface spill or overfill of
6 a regulated substance from the underground storage tank that is
7 intentionally caused by the person during the delivery of the regulated
8 substance into the underground storage tank.
9 (b) A person who is liable for corrective action under subsection (a)
10 is subject to a claim for contribution to corrective action costs arising
11 solely from the surface spill or overfill by a person described in section
12 8(b)(1) or 8(b)(2) of this chapter. Except as otherwise provided in
13 subsection (c) and (d), an action for contribution under this section may
14 be brought in the same manner and is subject to the same provisions as
15 an action brought under section ~~8(b)~~ **8(c)** of this chapter.
16 (c) Before a person brings a contribution action under this section,
17 the person must provide written notice of intent to bring the action by

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certified mail to:

(1) the department; and

(2) each person allegedly responsible for the surface spill or overfill that occurred during the delivery of a regulated substance into the underground storage tank.

(d) A person that provides notice under subsection (c) may not bring a contribution action if:

(1) the department commences an administrative proceeding or a civil action concerning the alleged surface spill or overfill not later than ninety (90) days after receiving notice under subsection (c)(1); or

(2) the person who receives the notice under subsection (c)(2) agrees in writing, within ninety (90) days after receipt of the notice, to remediate the surface spill or overfill in accordance with the state's rules governing spills and overfills.

SECTION 2. IC 13-23-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except where an owner or operator can prove that a release from an underground storage tank was caused solely by:

(1) an act of God;

(2) an act of war;

(3) negligence on the part of the state or the United States government; or

(4) any combination of the causes set forth in subdivisions (1) through (3);

the owner or operator of an underground storage tank is liable to the state for the actual costs of any corrective action taken under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal) involving the underground storage tank and is responsible for undertaking any corrective action, including undertaking an exposure assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by this title or a rule adopted under this title.

(b) ~~A person who:~~ **Subsection (c) applies to either or both of the following:**

(1) ~~A person who~~ pays to the state the costs described under subsection (a). ~~or~~

(2) ~~A person who~~ undertakes corrective action ~~resulting from to investigate, minimize, contain, eliminate, remediate, mitigate, or clean up~~ a release from an underground storage tank, **including emergency measures taken as part of an initial response to the release**, regardless of whether the corrective

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action is undertaken voluntarily or under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal).

(c) A person referred to in subsection (b) is entitled to bring an action to do either or both of the following:

(1) Recover costs.

(2) Receive a contribution from a person who owned or operated the underground storage tank at the time the release occurred. A person who brings a successful action to receive a contribution from an owner or operator is also entitled to receive reasonable attorney's fees and court costs from the owner or operator.

An action brought under this subsection may be brought in a circuit or superior court.

(d) A person may recover costs or receive contribution in an action brought under subsection (c) for either or both of the following:

(1) The costs paid to the state under subsection (b)(1).

(2) The person's reasonable costs incurred to undertake corrective action under subsection (b)(2).

(e) In resolving a contribution claim in an action brought under subsection (c), a court may allocate the cost of a corrective action among the parties to the action using use any legal and equitable factors that the court determines are appropriate in deciding whether to do any or a combination of the following:

(1) Award reasonable corrective action costs incurred.

(2) Allocate the reasonable corrective action costs incurred among the parties.

(3) Award reasonable attorney's fees and court costs to a person that brings a successful action under subsection (c).

~~(e)~~ **(f)** Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of petroleum shall be deposited in the petroleum trust fund.

~~(d)~~ **(g)** Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of a regulated substance other than petroleum shall be deposited in the hazardous substances response trust fund.

~~(e)~~ **(h)** The state may recover corrective action costs under this section in an action commenced under IC 13-14-2-6, IC 13-14-2-7, IC 13-7-5-7 (before its repeal), or IC 13-7-5-8 (before its repeal). An action to recover corrective action costs under this section may be combined, as appropriate, with an action to enforce an order issued under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal)

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1 to require corrective action not already undertaken by the
2 commissioner.

3 SECTION 3. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 178, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 178 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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